STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.	)	
TCG Illinois and TCG Chicago	)	
	)	
	)	**03-0239**
	)	
Verified Petition for Arbitration of Interconnection Rates,	)	
Terms and Conditions and Related Arrangements With	)	
Illinois Bell Telephone Company (SBC Illinois) Pursuant	)	
to Section 252(b) of the Telecommunications Act of 1996	)	

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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I. INTRODUCTION:

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and, pursuant to Section 761.400 of the Commission's Rules of Practice, 83 Ill. Adm. Code 761.400, submits its Reply Brief in the instant arbitration proceeding.

Staff has thoroughly addressed most of the points raised in the SBC Illinois Brief and AT&T Brief. Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC" or "SBCI") and AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago ("AT&T") and Staff each submitted on June 25, 2003 initial briefs in this proceeding (referred to as the "SBC IB", "AT&T IB", and "Staff IB" respectively). In the interest of brevity, Staff will not reiterate points previously made. Rather, Staff will only comment on several key points raised in the initial briefs. The absence of a response in this reply brief to SBC's and AT&Ts' positions should, however, not be construed to mean that Staff concurs with or does not oppose those positions; rather, it means that Staff believes it has adequately described its position in its initial brief and that no further comment is necessary.

II. REPLY TO ARGUMENTS:

1. GTC Issue 2: <u>AT&T Issue A</u>: Is it appropriate to cap the damages paid to a Party at the price of services not rendered? <u>SBC Issue A</u>: Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC's cost studies underlying the UNEs and services provided under this agreement? <u>Issue C</u>: Should SBC's liability to AT&T exceed commercially reasonable damages available under this agreement by also including remedies beyond those allowed by applicable law by allowing more than one full recovery on a claim?

With respect to the limitation of liability issues outstanding, SBC claims that only one exclusion to the negotiated clause remains an open issue. SBC states that "the only disagreement appears to be whether the Commission should require a third exception proposed by AT&T, for "**obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC**." SBC Initial Brief at 18. Staff assumes then that SBC has conceded to AT&T's other requested exclusions and language.

As to the open issue, SBC ignores Staff's policy reasons for also including this exclusion in the agreement, relying chiefly on the Commission's January 16, 2002, Arbitration Decision in Docket No. 01-0623. Id. at 21. Staff has addressed this issue extensively in its Initial Brief but is compelled to add one clarification to its position based upon SBC's claim that "AT&T's testimony offers little explanation for the proposed exception." Id. On the contrary, AT&T has indicated that it requires all of its remedies at law with respect to any FCC or ICC service quality plan and that it does not believe that limiting these potential remedies to the cost of the service is reasonable. Staff agrees. Moreover, Staff points out that SBC's rationale stated in its direct testimony that it must have a broad limitation of liability provision because its cost studies did not reflect any greater costs is without merit. First, SBC's acceptance in rebuttal testimony of the exclusion that the Commission proposed in the McLeod case is inconsistent with its cost study argument. Second, in MCI Telecomms. Corp. v. Illinois Bell Tel. Co., 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999), the court rejected the argument of SBC (then Ameritech). The court stated the following:

> According to Ameritech, the prices in the interconnection agreement would not accurately reflect Ameritech's costs unless Ameritech's liability was limited. Ameritech initially contended that its liability exposure was a component of its costs. See Def. Resp. at 41-42. However, MCI correctly argued [HN17] the Act mandates that prices be set according to forward-looking costs, and not according to a rate-of-return analysis. 47 U.S.C. § 252(d)(1)(A)(ii); see also, 47 C.F.R. § 51.105. Under the Act's pricing scheme, the cost of Ameritech's liability to MCI is not recoverable in the prices of unbundled network elements. *Id*. at *38.

Finally, in the McLeod arbitration case, the Commission appears to assume that the limitation of liability clauses in an interconnection agreement between an ILEC and a competing carrier should be the same or similar to the limitation of liability clauses in end-user tariffs or contracts. Staff points out first that the Commission has discretion in how it resolves this issue because Sections 251 or 253 of TA 96 do not prohibit limitations of liability. That said, due consideration must be given to the competitive impact of limiting the liability of a CLEC vis a vis an ILEC in the context of an arbitration of an interconnection agreement where the parties did not agree on a self-imposed limitation of liability. Moreover, there is also a significant distinction between the contracts between carriers and those between carriers and end-users. The impact on competition generally is much greater if a competitive carrier is denied its remedies beyond contract price than if an end-user is denied damages beyond the cost of the service. Moreover, the end-user has implicitly agreed to the limitation of liability by accepting the service. In the case of an arbitration of disputed provisions, there is no agreement, hence, the arbitration before the Commission. Similarly, in an arbitration under Section 252 of TA96, the California Public Utilities Commission recognized this distinction between the carrier-to-carrier agreements and carrier to end-user agreements. In adopting AT&T's limitation of liability provision, the California Commission stated:

> Pacific's proposed language would have limited both parties' liability to the dollar amount the other party would have charged for the affected services, regardless of whether the claim arises from willful or inadvertent negligent acts or omissions. This is similar to the liability provisions included in both parties' tariffs for their end users. The arbitrator determined that if one party causes significant damage to the other's property, it is not appropriate to limit liability to a minimal amount similar to the liability for damages which is due to end-user customers.

See, Application by AT&T Communications of California, Inc., et al, (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision No. 00-08-011, Application No. 00-01-022 (Filed January 24, 2000), 2000 Cal. PUC LEXIS 564, at Section 3.1.2, Issue 15.

2. <u>GTC Issue 5</u>; <u>GTC 5A</u>: Should the TELRIC rates in the Pricing Schedule be automatically updated when the rates change based upon ICC or FCC proceedings affecting wholesale prices, including tariff revisions, or should an amendment be required to incorporate such rate changes? <u>AT&T Issue;</u> <u>GTC 5b</u>: When amendments are required for price changes and/or changes in related terms, what procedures should be followed?

Staff, upon further review, believes it should modify its position, as stated in its initial brief. Staff continues to believe that in the case of non-asterisked rates, the rates ordered by the Commission should go into effect on its effective date, and should be reflected in the agreement by reference to the tariff. However, Staff believes that it should revise its position requiring SBC to file a compliance tariff within 30 days of any final order modifying a rate contained on the Pricing Schedule or setting a new rate that is to be included in the Pricing Schedule. The rates should go into effect when ordered by the Commission. It is not necessary to require SBC tariff filings based on the language in an interconnection agreement since interconnection agreements may be different than a general tariff available to all parties. Therefore, Staff proposes to withdraw the following statement it proposed for §1.30.4: "<u>SBC is to file a compliance tariff within thirty (30) days of the date of any final order modifying a rate contained on the Pricing Schedule, or setting a new rate that is to be included on the Pricing Schedule."</u>

<u>Proposed Language:</u>

Staff proposes the following modification to §1.30.4:

> The rates set forth in the Pricing Schedule to this Agreement (except for rates marked with an asterisk, as discussed below) are subject to change based upon he outcome of Illinois Tariff Review Proceeding Docket 02-0864 and other Illinois Commerce Commission proceedings affecting wholesale prices which are given general applicability by the Commerce Commission, including carrier-specific dockets that are given general applicability, where the outcome produces rates different than the non-asterisked rates set forth in the Pricing Schedule. Absent a stay of such an outcome, the affected, non-asterisked rate[s] shall be modified consistent with the outcome via written amendment and or its Pricing Schedule, as appropriate, within thirty (30) days after receipt of written notice by one Party from the other Party. Where such rate differences are accompanied by or are the result of changes to terms and conditions that are applicable or legitimately related to the item(s) associated with the

affected non-asterisked rates, then the Parties shall include in their amendment conforming modifications to such terms and conditions. The modified rates and any associated modified terms and conditions shall take effect upon the effective date set forth in the Commission order that approves the rate. If the order approving the rate is silent as to the effective date, then the rate would become effective upon the approval of the amendment by the Commission or within sixty (60) days after receipt of the written notice described above, whichever is sooner, unless otherwise agreed by the parties; provided, however, that if the Commission's order imposes a later effective date than either of these two dates, the Commission's effective date shall govern. Rates set forth in the Pricing Schedule that are marked with an asterisk are expressly *not* subject to change in the manner discussed in this Section 1.30.4. Nothing in this paragraph is intended to limit either Party's right to obtain modification of any rates in this Pricing Schedule (asterisked or not) or any associate terms and conditions in accordance with other terms of this Agreement, including but not limited to the Agreement's "Change in Law; Reservation of Rights" provision Section 3.0.

3. GTC Issue 7: Should CLEC's be responsible for the cost associated with changing their records in SBC-Illinois' systems when CLECs enter into a merger, assignment, transition, etc. agreement with another CLEC?

SBC Illinois purports that Staff raises a new issue in this proceeding by proposing that the Bona Fide Request ("BFR") process be used to establish a rate SBC can charge AT&T for changes SBC would need to make to OCN/ACNA codes if AT&T enters into a merger, assignment, transition etc. with another CLEC. SBC IB at 35-36. Staff disagrees with this contention. Although this situation does not yet exist, the parties clearly envision its possibility by including language addressing the situation in the ICA.

Staff's proposal does not create a new issue. The question posed in the Master List of Issues subsumes the method in which SBC is to determine costs. In addition, the absence of a rate, or a methodology for determining a rate, leaves this provision ambiguous and it is in the public interest to identify the methodology for determining a rate. Finally, AT&T accepts Staff's proposal, therefore it becomes a de facto issue within this proceeding.

The question as posed by SBC envisions that the sole issue is whether SBC should be compensated for costs it incurs. SBC argues that the form of the question limits the parties ability to reach the real issue. Essentially, SBC argues that once it is determined that SBC is entitled to be compensated, they can charge AT&T whatever they want, and if AT&T doesn't like a bill it receives, AT&T can file a complaint with the ICC. SBC IB at 35. It is not in the public interest to follow that path, and AT&T does not desire to follow that path. See AT&T IB, at 23 (accepting Staff's BFR proposal). Furthermore, the notion of recognizing costs that should be recovered is interwoven with the method of recovering the costs. Therefore, either the cost, or the method to determine the cost needs to be clearly identified in the contract.

The language proposed by SBC, on its face, leaves the rate ambiguous. The language AT&T opposes states: "CLEC is responsible for costs of implementing any changes to its OCN/ACNA whether or not it involves a merger, consolidation, assignment or transfer of assets." Master List of Issues, GTC at 19. The rate, or the methodology for determining the rate SBC would charge is not identified; though both parties clearly identify the possibility of this charge occurring. When a contract does not provide the amount of compensation, then a court will imply that there is an agreement between the parties and determine what the services were reasonably worth. See Fehr Construction Co. v. Postl System of Health Bldg, 288 Ill 634, 639 (1919). Although the issue of determining the exact rate to be charged is not at issue, it is in the public interest to define the procedure the parties should follow to determine that rate, especially when the process proposed is defined in a public document – a tariff. Moreover, AT&T had initially placed at issue the question of how much it is to be compensated by arguing that "SBC is already compensated for its record-keeping costs through the recurring and non-recurring charges imposed when AT&T submits a local service order." AT&T IB,at 23. In its initial brief, AT&T has accepted Staff's proposal on this issue. Id. Aside from the fact that AT&T had already made the rate an issue, AT&T's acceptance of Staff's proposal is a de facto adoption of Staff's position, since it is a party to the contract. AT&T's acceptance of Staff's proposal makes Staff's proposal an issue set forth by the parties, as envisioned by section 252(b)(4)(A) of the 1996 Act.

SBC also argues, in broad strokes, that the BFR process is not an appropriate mechanism for addressing charges of the sort that are at issue. SBC IB at 36. Staff disagrees with this contention. Staff wants to clarify that it is proposing that the BFR process be used, not the BFR-OC process. In reviewing the BFR process set forth in ILL. C.C. No. 20, Part 19, Section 1, 7th Revised sheet No. 3, it states:

> A "Bona Fide Request", as referenced in this tariff, is a telecommunications carrier's written request to the Company to provide:
> ***
> • a customized element for features, capabilities, functionalities, or unbundled network elements not currently otherwise provided under the this tariff.

OCN's are part of the service orders SBC processes. Updating OCN/ACNA codes due to AT&T merging, assigning or transitioning falls within the BFR Process described above, since it is a functionality not currently being provided. Therefore, the BFR process in the tariff is an appropriate procedure.

Staff agrees with SBC that if there are costs SBC is entitled to recovery of those costs. However, the method by which SBC proposes to recover its costs may allow it to over-recover. Staff Exhibit 3.0 at 5. SBC proposes "to charge AT&T for [SBC's] reasonable or appropriate costs. If SBC Illinois sends AT&T a bill that AT&T believes is too high, AT&T can dispute the bill, as other provisions in the interconnection agreement allow it to do." SBC IB at 35. SBC's position acknowledges that both parties would come back before this Commission if an issue arises. Id. It is not in the public interest to endorse a provision, when Staff, and AT&T, are proposing a reasonable alternative that would alleviate the burden upon both parties and the Commission of entertaining a complaint case. Staff, therefore, recommends that the BFR process that is set forth in SBC's tariff (ILL. C.C. No. 20, Part 19, Section 1), be used to determine if the rate is reasonable, and is appropriate in this context.

4. UNE Issue 1: Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?

In its Initial Brief, AT&T asserts that "there is no reason to distinguish between network elements and unbundled network elements and to do so is to make a distinction without a difference as far as SBC's unbundling and combination obligations are concerned." AT&T IB at 72. In addition, AT&T implicitly suggests that Staff witness Omoniyi agrees with its interpretation. AT&T is incorrect. As Staff correctly pointed out, the term "network elements includes both unbundled and bundled elements." (See Staff Exhibit 2.0 at 22-23). However, at no time did Staff suggest that the term "network elements" is interchangeable with the term "unbundled network elements."

Thus, Unbundled Network Elements is the subset of Network Elements that SBC must provide to AT&T in accordance with Section 251(c)(3) of the 1996 Act. According to Section 252(d)(2) of the 1996 Act:

> In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether –
> (A) access to such network elements as are proprietary in nature is necessary; and
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that its seeks to offer.

The standards contained in Section 252(d)(2) are commonly referred to as the "necessary and impair" standards. The subset of Unbundled Network Elements, therefore, includes only those Network Elements that have been found by the Commission or FCC to meet the necessary and impair standards of Section 252(d)(2). Thus, as Staff has stated in its initial brief, network elements and unbundled network elements are not interchangeable; that is, the set of network elements is broader in scope than the set of unbundled network elements Staff IB at 45-46.

Turning to the second issue addressed by both parties, SBC's unbundling and combinations obligations in this ICA, Staff points out that the concept of unbundling obligations is a separate and distinct concept from the concept of combinations. Under federal rules (47 C.F.R., Part 51, Subpart F), SBC is required to provide at TELRIC rates those network elements that are found by the Commission or FCC to be unbundled network elements. Thus, in a general sense, the unbundling requirements of Section 252(c)(3) are requirements that impact the prices that SBC can charge for network elements meeting the necessary and impair standards. SBC is required under federal law, however, to provide unbundled elements both independently and, under certain circumstances, in combination. As noted by the Supreme Court (TELRIC Order at 61):

> Bundling and combination are related but distinct concepts. Bundling is about lease pricing. To provide a network element "on an unbundled basis" is to lease the element, however described, to a requesting carrier at a stated price specific to that element. Iowa Utilities Board, 525 U. S., at 394.

Apart from federal requirements associated with unbundled network elements, SBC is also subject to certain state requirements for general network elements (i.e., both those that have been found to meet the necessary and impair standards of Section 252(d)(2) and those that have not been found to meet the necessary and impair standards of Section 252(d)(2)). In particular, the Commission found that "section 13-804(d)(4) forces the provision of a platform of, apparently any and all, 'combined network elements.' (Order in Docket No. 01-0614.) The Commission, however, did not find the PUA to impose these further requirements on SBC with respect to network elements not included in the platforms contemplated in 13-804(d)(4). Therefore, while the Commission has found the PUA to impose upon SBC certain requirements for the provision of network elements, the Commission has not found that all network elements are unbundled network elements nor has it found that SBC is to provide all network elements under the same rates, terms, and conditions that SBC is required to offer when provisioning unbundled network elements.

SBC's obligations with respect to unbundled network elements are different than those with respect to general network elements under both state and federal rules and regulations. AT&T is therefore incorrect when it asserts that "there is no reason to distinguish between network elements and unbundled network elements and to do so is to make a distinction without a difference as far as SBC's unbundling and combining obligations are concerned." AT&T IB at 74.

5. __UNE Issue 15__: __SBC Issue__: Under what circumstances is a CLEC able to combine for itself? __AT&T Issue__: Is SBC-Ameritech required to combine UNEs that are ordinarily combined?

As Staff pointed out in its Initial Brief, the Commission has already ruled in Docket Number 01-0614 that SBCI must combine UNEs in a UNE-P tariff if the "requested combination is of a type ordinarily used or functionally equivalent to that used by the Company or the Company's end users where the Company provides local service". Staff IB at 63, *citing* Staff Ex. 5.0 at 15. Staff agrees with AT&T that SBCI's "ordinarily combined" obligations, moreover, is not contingent upon whether or not a CLEC is collocated in SBCI's central office. AT&T IB at 134. Staff further agrees with AT&T that SBCI's proposal would cause AT&T to incur additional costs, which would adversely affect AT&T's ability to be competitive. AT&T IB at 133, *citing* AT&T Ex. 6.0, at 47. SBCI's proposed language for Sections 9.3.3.9.5.3, 9.3.3.10, 9.3.3.10.1, 9.3.3.10.2, 9.3.3.10.3, 9.3.3.10.4, 9.3.3.10.5 and 9.3.3.10.6 is inconsistent with its obligations under the Commission's orders and should therefore be rejected. AT&T's language for Sections 9.3.1.3.6, 9.3.1.3.7 and 9.3.2.2 is consistent with State law requirements and is acceptable to Staff.

6. __UNE Issue 16__: Does UNE-P include operator service, directory assistance, tandem switching and call-related databases?

In AT&T's Brief, it is indicated that AT&T has revised its proposed language for Section 9.3.1.1. AT&T IB at 136. AT&T proposes the new following language for Section 9.3.1.1:

> The UNE-Platform shall consist of the NID, the loop, local switching, <u>and</u> shared transport <u>and shall include access to </u>signaling and call-related databases. The UNE-Platform may also ~~include~~ <u>be used in conjunction with </u>tandem switching and OS and DA (either provided by SBC Illinois or via customized routing by which SBC Illinois routes AT&T's OS and DA traffic to AT&T's OS/DA platform or the OS/DA platform of a third party).

Id. Now, in the new language proposed by AT&T, AT&T acknowledges that the UNE-P platform does not consist of signaling and call-related databases but it will allow AT&T access to signaling and call-related databases. Consequently, AT&T's revised language for Section 9.3.1.1 is acceptable to Staff.

7. <u>UNE Issue 18A</u>: <u>AT&T Issue</u>: Should AT&T and its HBSS be required to be on the same LSOG version? <u>SBC Issue</u>: Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communication to enable the HBSS to place orders on AT&T's behalf for Line Splitting?

AT&T contends SBC's "same version" policy, which requires that all EDI orders coming from a particular company code be sent to SBC in the same LSOG version, imposes an unreasonable requirement on AT&T and its High Bandwidth Service Supplier ("HBSS") partner to remain synchronized on a particular LSOG version for the duration of their relationship. AT&T IB at 144. According to AT&T, such a policy restricts the ability of an HBSS to support multiple partnerships with voice CLECs. Id. AT&T further maintains that the "same version" policy is discriminatory because SBCI "same version" policy does not apply when SBCI itself makes arrangements with other

CLECs. Nor does it apply when SBCI provide combined voice and data services to retail customers. Id. at 145.

Still, the fundamental issue from Staff's point of view is--who should pay for the OSS modification costs SBC will have to make in order to accommodate ordering from a co-voice and data CLEC who are not on the same LSOG version. AT&T argues that SBC should absorb these modification costs and offer this service for free. It is unreasonable, however, to expect SBCI to pay for the business decisions made by AT&T with a HBSS. SBCI has altered its systems such that data CLECs, who are not on the same LSOG version, can partner with SBCI but it presumably has absorbed the costs of making this possible. Similarly, if an HBSS is not on the same LSOG as AT&T, then AT&T should absorb the costs involved with partnering with the HBSS.

8. Intercarrier Compensation Issue 2A: Can the terminating Party charge exchange access to the originating Party for traffic within the originating Party's local calling area?

In attachment C to the Petition in this proceeding, the following language was included within SBC's proposed language for Article 21, Section 21.2.7:

> Local Calls must actually originate or actually terminate to End Users physically located within the same common local or common mandatory local calling area.

In attachment C to the Response Petition in this proceeding, SBC revised this proposed sentence to state:

> Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area within operating areas where SBC-Illinois is the ILEC.

Staff rejected SBC's proposal to include this sentence explaining:

> ....SBC suggest that AT&T would need a separate interconnection agreement that would cover interconnection between AT&T and

> SBC when AT&T wants to interconnect with SBC to provide service between an AT&T customer located in the Verizon portion of the Commission approved ILEC local calling area and SBC customers in that same Commission approved local calling area.
>
> If this is, in fact, what SBC is proposing, Staff believes this proposal should be rejected. SBC has offered no reason why this agreement would not govern the rates, terms, and conditions of interconnection for all local exchange traffic exchanged between AT&T customers and SBC Illinois customers located in SBC Illinois service territory.

Staff IB at 78-79. Staff clarifies, however, that only the latter part of SBC's proposed sentence is objectionable. Consistent with Staff's recommendation to resolve the FX or FX-like traffic issue as it relates to Intercarrier Compensation Issue 2b, Staff is not opposed to inclusion of the following sentence:

> Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area.

Staff, therefore, recommends the Commission adopt the following amended SBC proposed language for Article 21, Section 21.2.7:

> "Local Calls", for purposes of Intercarrier Compensation, is traffic where all calls originate and terminate within the same local and common mandatory local calling area, *i.e.*, within the same or different Illinois ILEC Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission. Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area. The Parties agree that, notwithstanding the classification of traffic under this Article, either party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

It is Staff's opinion that this language more clearly defines the resolutions that Staff recommends the Commission adopt with respect to the Intercarrier Compensation issues in this proceeding.

9. ***<u>OSS Issue 2</u>: Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate 'as is' on UNE-P migration orders through a standard indicator on the orders?***

As Staff noted in its Initial Brief, in competitive industries customers who wish to switch from one service provider to another do not typically have the "as is" ordering option and must specify to the new service provider exactly which features they desire. Staff IB at 104-105. In this situation, however, SBCI supported "as is" OSS ordering until October of 2002, when it ceased to support "as is" migrations.

In light of this uncontested fact, Staff agrees with AT&T that SBCI "over-characterizes" the Commission's discussion in its 271 Recommendation to the FCC. See AT&T Initial Brief at 307. The Commission found, based on the evidence and arguments made in that proceeding, that "we do not find a state compliance issue" regarding an alleged SBCI requirement that it "develop and implement *new* [as is] ordering and processing capabilities." *See Order*, Investigation concerning Illinois Bell telephone Company's compliance with Section 271 of the Telecommunications Act of 1996 (May 13, 2003)("SBCI 271 Recommendation") at ¶ 400 (italics added). In Staff's view, moreover, the following language puts to rest any idea that the Commission fully addressed and decided this issue in its 271 Recommendation to the FCC:

> We have indicated, time and again, that the purpose of this proceeding is "not to entertain novel issues or . . . to impose new obligations. The latter would be most inappropriate given that this proceeding is not set up to adjudicate the rights of any parties." <u>See</u> <u>Kansas & Oklahoma 271 Order</u>, ¶ 19 (the purpose of a section 271 proceeding is not to litigate "new and unresolved interpretive disputes about

the precise content of an incumbent LEC's obligations to its competitors"). SBCI 271 Recommendation at ¶ 403.

SBCI is also incorrect in asserting that if it is required to provide AT&T "as is" ordering, then AT&T would dictate ordering procedures in the industry. Presumably, SBCI could "turn off" the "as is" ordering feature for those CLECs who do not want "as is" ordering. On the other hand, any CLEC who requested "as is" ordering would also be required to share in the modification costs necessary to accommodate "as is" ordering and not free ride on AT&T. It may be true that SBC may have to delay other projects to accommodate "as is" ordering, but this is not a compelling rationale to deny AT&T "as is" ordering.

If AT&T, however, wishes "as is" ordering, it should bear its share of any legitimate cost of altering SBCI's OSS systems to accommodate "as is" ordering, and language to this effect should be included in AT&T 's proposed language for Section 5.14 of the interconnection agreement ("AT&T will compensate SBCI for its share of any OSS implementation costs necessary to accommodate "as is" ordering"). Any other CLEC who requests "as is" ordering should also share in the OSS modifications cost necessary to accommodate "as is" ordering. If AT&T is unwilling to bear its share of any legitimate OSS implementation costs, then SBCI's wording for Section 5.14 is acceptable. Staff Ex. 5.0 at 23-24, lines 520-531.

In light of the fact that SBCI supported OSS ordering "as is" up until October of 2002, SBCI should be able to readily quote AT&T a specific cost for its share of any OSS modifications that SBCI would need to undertake in order to again support "as is" OSS ordering. Such costs, as AT&T pointed out in its Reply Testimony (AT&T Ex. 5.1 (Webber) at 3-4), should be spread among all CLECs that benefit from "as is" ordering.

After receiving the SBCI quote, AT&T can then make an informed decision to either: (i) determine that the cost is “reasonable” and that AT&T desires topay for “as is” ordering, (ii) determine that the cost is “reasonable” but that AT&T does not desire to pay for “as is” ordering, or (iii) contest the quoted costs as “unreasonable” through the ADR processes contained in the ICA.

III. CONCLUSION:

For all of the foregoing reasons, we request the Administrative Law Judges accept Staff’s recommendations in their entirety as set forth herein.

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